

Minicucci, Bob

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Sent: Thursday, July 05, 2007 10:39 AM
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Subject: NH ELI: Minutes of Workgroup meeting July 2, 2007

Hello, and I hope you all had a happy Fourth - this message has two purposes:

- 1) Convey some miscellaneous project news
- 2) To record & communicate the discussions at the Monday, July 2, workgroup meeting

1) - Project news

I have learned of the "NH Growth and Development Roundtable", run by the NH Charitable Foundation. A fact sheet on that group was circulated at the July 2 meeting, a link to this document can be found at <http://www.nhcf.org/page16963.cfm>. I am in voice mail tag with their executive director and I'll keep at it, I expect to meet with them sometime soon.

Gary Abbott of AGCNH had an idea from his membership that a DES award for excellent construction/development projects, analogous to the Governor's P2 Award, would be valued. I said that this project was conceived as being about an organization's overall operations and not so much on projects, but that the idea had merit. Awards have power and can catalyze broader change - what do you all think?

We were told that NH's only law school, the Pierce Law Center, has dropped environmental law as a specialty. Perhaps we need to look into this under the "college curriculum" task. Why did they do this?

I have been invited to speak on this project to the NH Bar Association's environmental section meeting of Sept. 19 in Concord.

Future events, as far as I see them now: A revised program design white paper should be distributed by Aug. 1. I've scheduled a meeting room for the next meeting of the program design work on **Thursday August 23 at 2:00 PM**. The next meeting of full stakeholder steering committee is tentatively scheduled for **Monday September 17 at 1:30**.

2) - Minutes of a meeting of work group #1, Reward & Recognition program design. These minutes are subject to the review of the attendees. If I've mis-represented things, please let me know.

The group met on Monday June 4 from approximately 2:15 PM to 4:00 PM at DES offices, 29 Hazen Drive, Concord, NH, Room 114. Attendees were: Brian Duffy, PSNH; Jean Holbrook, USEPA Reg 1 (by phone); Linda Landis, PSNH; Bob Minicucci, DES; Andrea O'Brien, NH SBDC; Eric Wood, EnviroSense, Inc.

The intent of the meeting was to begin finalizing a framework for a Tier 1 "Aspiring Leaders" recognition program.

I've updated the program design "white paper" to reflect comments received in early June, and we began our discussion on July 2 around that.

Topic 1, certifying compliance status: An applicant to Tier 1 would have to state that their organization is in compliance with applicable regulations. The willingness or the ability of a business, especially a small one, to do that is questionable. This would presumably mean that a) they would be asked to so certify "to the best of their knowledge", or words to that effect, and b) some sort of amnesty or non-targeting statement would need to be made by DES. This second item is touchy and would have to be worded very carefully, as DES could be open to criticism relative to giving away too much. Note that the organizations we want in Tier 1 have the intent/desire to do the right thing.

One reason given for a reluctance to state one's compliance status was a fear that DES would react strongly, with inspections and enforcement. There was an interesting difference of opinion here. On the one hand, there was the

position that it is widely known that DES is a most cooperative state agency and quite open to conversation, on the other hand it appears that many companies, especially smaller ones, do not have this view for whatever reason and are in fear of contacting a (any?) state agency. If this is so, then perhaps some publicity is needed; DES's Pollution Prevention Program was cited as having (state) statutory backing for not involving enforcement authorities in any but the most severe cases. An existing federal small business compliance assistance policy was cited as offering near-complete amnesty from enforcement for self-reported, and quickly-addressed, non-compliances. Later research shows that this is an EPA policy, also used by DES, which can be found at <http://www.epa.gov/Compliance/resources/policies/incentives/smallbusiness/sbcomppolicy.pdf>. DES's Compliance Assurance Response Policy (<http://des.nh.gov/Legal/carp/>) contains similar provisions. On balance, it appears that DES can address such worries on the part of prospective applicants in fact, but there is a selling job to do to overcome perceptions.

Note that self-certification to compliance status is already done in NH, through the RCRA Small Quantity Generator self-certification program - the concept may not be too hard a sell after all, DES & waste generators are apparently comfortable with the idea.

Topic 2: Entry criteria: Examples were offered from a Governor's P2 Award application: the applicant assigns definite, and/or distributed, environmental responsibility, that comes with accountability; statements are made regarding reduction of all sorts of risks; statements are made regarding commitments to waste minimization/pollution prevention. DES could ask Tier 1 applicants to sign a similar declaration. A commitment to address problems that may arise would be needed. The question then becomes how to verify that these statements are in fact being carried through - evidence of the applicant's training efforts and of existing programs should be readily obtainable.

Topic 3: Exit criteria: Given the fairly basic entry criteria now being considered for Tier 1 ("...no unresolved criminal problems (i.e., all fines paid and all sentences completely served), and no pending civil/regulatory issues."), wouldn't it be appropriate for any enforcement action to cause program exit? This led to the question - what does "exit" mean? Loss of recognition, removal from the 'elite leader' status one may have gained, loss of the right to show a program notice/logo in one's letterhead, etc. This topic did not generate much discussion, but led to the next topic:

Topic 4: Why would organizations apply? There has to be a reason for them to go through the trouble. Recognition is valued to some extent and easy to deliver. Membership in an elite group has value, and is probably easy for DES to deliver. Both of these would apply to Tier 1. Beyond that? Expedited permitting, or at least certainty of a response time would be valued. Having a single agency point of contact would be valued (at least among those who know it's safe to call DES in the first place), but perhaps a drain on DES's staff resources.

We discussed existing "substantive" incentives in EPA's Performance Track (<http://www.epa.gov/performance/track/benefits/index.htm>).

Some organizations who are clearly leaders (e.g., Stonyfield) have no apparent interest in entering this sort of new-relationship-with-the-government program. Why not? I will ask Stonyfield or Budweiser to join this work group in August to tell us why.

Topic 5: Analogous programs in other states: Vermont's Environmental Partner (see: <http://www.anr.state.vt.us/dec/ead/vbep/index.htm>) sounds quite similar to our Tier 1, but included recruitment requirements - who would one recruit? A supplier or customer? A competitor?

Two levels of Kentucky's EXCEL program (see <http://www.dca.ky.gov/kyexcel/>) seemed analogous. Analogies with Maine's STEP-UP program (see <http://www.maine.gov/dep/oc/stepup/index.htm>) were harder to draw. Virginia's Environmental Excellence Program (see <http://www.deq.virginia.gov/veep/about.html>) was mentioned briefly. Wisconsin's Green Tier program (see <http://www.dnr.state.wi.us/org/caer/cea/environmental/>) was discussed briefly, but this program seems to apply more to NH's proposed Tiers 2 & 3.

This led to a short discussion of the notion that regulatory law is not the only legal means to ensure environmental performance, and of how Bavaria, the Netherlands, and Wisconsin (see above) are doing that. For a brief overview of this idea in terms of general legal frameworks, see <http://www.mswg.org/documents/gunninghamreconfigure.pdf> and <http://www.mswg.org/documents/2006/ParkCity/Neil%20Gunningham%20Presentation.ppt>. Each of the places mentioned uses a form of contract to ensure environmental performance with a facility, a group of similar facilities in a geographic area (e.g., all the dairy farms in a watershed), or with an industry sector. This sort of arrangement has high transaction costs on both sides, so it would presumably be reserved for high-value situations where the investment of resources can be justified.

Thank you all for your interest and energy
Bob Minicucci
NH DES

